IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7961 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NATWARBHAI BABABHAI VAGHRI

Versus

HEIR OF DECD. SENDABHAI RANCHODBHAI

Appearance:

1. Special Civil Application No. 7961 of 2004

MR DM AHUJA for Petitioner No. 1-4

MR PREMAL R JOSHI for Respondent No. 1-5

MR DEVAN M DESAI for Respondent No. 1-5

NOTICE SERVED BY DS for Respondent No. 6

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 03/12/2004

ORAL JUDGEMENT

#. Rule. Mr.Devan M.Desai, learned advocate, waives service of rule on behalf of respondent nos.1 to 5.

#. With the consent of the learned advocates for the respective parties, the matter is taken up for final hearing today.

#. In this petition filed under Article 227 of the Constitution of India, the petitioners have challenged the legality and validity of the order dated 13.11.2003 passed by the learned 3rd Extra Assistant Judge, Gandhinagar below Exh.34 in Regular Civil Appeal No.25 of 2000, by which, the application submitted by the petitioners to transpose them as appellant nos.2 to 4 from the original respondent nos.6,8 and 9 is rejected.

#. It is an admitted position that the petitioners-original respondent nos.6, 8 and 9 in the appeal want themselves to be transposed as co-appellant nos.2 to 4 in Regular Civil Appeal No.25 of 2000. Considering the fact that even by remaining as they are as respondent nos. 6, 8 and 9 in the appeal, they can oppose the judgment and decree passed by the trial Court also considering Order 41 Rule 4 of the Civil Procedure Code. However, in view of the fact that the original appellants of Regular Civil Appeal No.25 of 2000 who were co-plaintiffs along with the petitioners had died during the pendency of the proceedings on 29.9.2004, and, therefore, if there is nobody as appellant, the appeal would be abetted and under the circumstances, it will be in the interest of justice to allow the application Exh.34 by allowing the petitioners to transpose them as appellants of Regular Civil Appeal No.25 of 2000. Accordingly, the impugned order passed below Exh.34 in Regular Civil Appeal No.25 of 2000 is hereby quashed and set aside and the petitioners are ordered to be transposed themselves as appellants of Regular Civil Appeal No.25 of 2000. In the facts and circumstances of the case and as the appeal is of 2000, learned appellate court is directed to decide and dispose of the said appeal within a period of six months from the date of receipt of the writ of this Court. The appellate court is also directed to amend the cause title of the appeal accordingly subject to fulfilling all conditions which are required to be fulfilled, such as court fees etc.

#. In view of the above, this petition is allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

Direct service is permitted.

(M.R.Shah,J)

(pathan)